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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,621	03/05/2002	Allan S. Frieze	3704-117.1.1.1 US	9170

7590 02/21/2006
Irving M. Fishman
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EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,621

Applicant(s)

FRIEZE ET AL.

Examiner

Krisanne Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23, 27-36, 39-42, 55, 64, 73 and 74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23, 27-36, 39-42, 55, 64, 73 and 74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 11/28/2005 was filed after the mailing date of the office action on 9/30/2005. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deeds U.S. patent No. 5,524,755 in view of Miller U.S. patent No. 5,384,103, Feldman et al., U.S. patent No. 5,658,529, the Military Specification Anodic Coatings for Aluminum and Aluminum Alloys, MIL-A-8625F, and Applicant's Admission of the State of the Prior art.

Deeds teaches substantially the sterilization container as claimed, namely a container having a top and bottom means each having a set of vent holes covered by filter and filter retaining means, the sets of vent holes being offset from each other. The top and bottom are separated from each other by a silicone gasket when interconnected, which intrinsically functions to electrically insulate the two means. See the figures and column 2, lines 20-50.

Miller et al., teach that it is known and expected to construct sterilization container components from anodized aluminum, wherein the container is formed from

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two, vented, mating halves, and having stackable feet means provided thereon. The container is also provided with tray means therein for receiving articles to be sterilized and both the tray and container are provided with handles to accommodate user manipulation thereof. See column 2, lines 30-55, column 4, lines 1-45 and column 5, lines 58-60.

Feldman et al., teach the known and expected process of subjecting anodized aluminum medical instruments to gas plasma for sterilization thereof, as well as a process for applying the anodized coating such that it is not affected detrimentally by a hydrogen peroxide plasma treatment. See column 1, lines 24-32 and lines 45-51.

It would have been obvious to one of ordinary skill in the art to form the container means of Deeds from anodized aluminum as recognized as conventional by Miller and in a form as in Feldman et al., because it would be resilient even under the environment of plasma sterilization, which is recognized for being a highly reliable sterilization process.

MIL-A-8625F teaches the standard specification for anodized coatings on aluminum, including 6061, which teaches effective standard thickness ranges from 0.02 mils to 4.5 mils depending on the application type. It further teaches that coating thicknesses can be controlled to extremely close tolerances. See page 1, and page 17, particularly Tables IV and V.

Applicant's own admission of the state of the prior art at page 9, lines 6-7 of the instant specification, states that normally allowed specifications for coating thicknesses are up to 0.7 mils.

It is noted that Miller and Feldman et al., are silent as to the thickness of the anodized coating, however, they clearly disclose that the coatings are thin and MIL-A-8625F clearly teaches that standard specifications of anodized aluminum coatings, including for the preferred aluminum of the instant claims, are inclusive of the instantly claimed range of thicknesses and Applicant's own admission supports the conventionality of a range inclusive of that claimed. As such, one of ordinary skill in the art clearly would have chosen a conventionally recognized coating thickness and it would have required only routine experimentation to determine those thicknesses optimal for effectiveness in the sterilizing environment without interfering therewith.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,589,477 B1 in view of Feldman and MIL-A-8625F. 6,589,477 claims substantially the invention as presently claimed without, however,

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reciting the specific thickness of the anodized coating of the aluminum. Feldman clearly teaches anodized coatings formed to withstand plasma sterilization parameters, and MIL-A-8625F teaches conventionally recognized thicknesses of such coatings as falling well within the range claimed by applicant. As such, one of ordinary skill in the art clearly would have chosen a conventionally recognized coating thickness and it would have required only routine experimentation to determine those thicknesses optimal for effectiveness in the sterilizing environment without interfering therewith.

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 200-285 of copending Application No. 10/295,758. 10/295,758 claims substantially the invention as presently claimed with only minor language differences there between.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

Applicant's arguments filed 11/28/2005 have been fully considered but they are not persuasive.

Applicant argues that the prior art of record fails to teach the anodized coating thickness range as now claimed, however, the Examiner would disagree noting that the newly cited art clearly teaches effective ranges inclusive thereof as does Applicant's own specification.

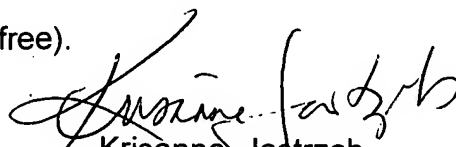
Applicant further argues that the applicability of the currently claimed thickness range is both critical and surprising, however, the Applicant has failed to provide any factual evidence in support of this argument. The statements presented in the Declaration by Marcia Frieze are merely statements, lacking any data or concrete demonstrating evidence, supporting her position.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab

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Primary Examiner
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February 16, 2006